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8
9 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

10 OTR WHEEL ENGINEERING, INC.,
11 BLACKSTONE/OTR, LLC, and
F. B. T. ENTERPRISES, INC.,

12 Plaintiffs,

13 vs.

14 WEST WORLDWIDE SERVICES,
15 INC., and SAMUEL J. WEST,
individually, and his marital
16 community,

Defendants.

No. 2:14-CV-00085-LRS

AMENDED STIPULATION OF
CONFIDENTIALITY PROTECTION
AND FEDERAL RULE OF
EVIDENCE 502(d) ORDER

17 Pursuant to this Stipulation, the parties, through their counsel, agree as
18 follows:
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Exhibit A

STIPULATION OF CONFIDENTIALITY PROTECTION AND
FEDERAL RULE OF EVIDENCE 502(d) ORDER - 1

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1 1. The parties, by and through their counsel, stipulate and agree that
2 certain documents and other information and materials in this lawsuit that will be
3 exchanged in discovery or otherwise are confidential and/or proprietary and/or
4 contain trade secrets. This Stipulation of Confidentiality Protection – and any
5 designation of a document, material or information (whether written, graphic or
6 electronic) as “CONFIDENTIAL” or "CONFIDENTIAL-ATTORNEY'S EYES
7 ONLY" under this Stipulation – is intended solely to facilitate the preparation and
8 trial of this case. Any such designation under this Stipulation of Confidentiality
9 Protection shall not be construed as an admission or an agreement by any party:

10 a. That the designated disclosure constitutes or contains
11 confidential or proprietary or trade secret information; or

12 b. That any document, material or information, or any portion
13 thereof, constitutes competent, material, relevant or admissible evidence in this case.

14 2. DEFINITIONS:

15 a. When used herein, the word “document” means all written,
16 recorded, or graphic matter whatever, including but not limited to
17 interrogatory answers, responses to requests for admission,
18 documents produced in response to document requests or
19 voluntarily, including writings, drawings, graphs, charts, maps or
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1 other materials within the contemplation of Federal Rule of Civil
2 Procedure 34, deposition testimony, deposition transcripts and
3 exhibits, trial exhibits, hearing or trial transcripts, any portion or
4 summary of any of the foregoing, and any other papers that quote
5 from, reflect, reveal or summarize any of the foregoing.

6 b. "Confidential Information" means such information that:

- 7 i. is used by a party in, or pertaining to, its business, which
8 information is not generally known and which that party
9 would normally not reveal to third parties or, if disclosed,
10 would require such third parties to maintain in confidence; or
11 ii. which may reasonably have the effect of harming the
12 business operations or competitive position of the producing
13 party, or a party in privity with the producing party, or would
14 violate an obligation of confidentiality to a third person,
15 including a court

16 c. "Confidential – Attorney's Eyes Only" means such information that:

- 17 i. is particularly sensitive technical information relating to
18 research for and production of current products, technical,
19 business and research information regarding future products,
20 highly sensitive financial information and marketing plans

1 and forecasts, customer lists, pricing data, cost data, customer
2 orders, customer quotations, as well as such other documents,
3 information or materials that relate to other proprietary
4 information that the producing party reasonably believes is of
5 such nature and character that disclosure of such information
6 would be harmful to the producing party; or

7 ii. trade secrets.

8 d. When used herein, "Confidential Material" means any and all
9 documents or things that contain, reflect or reveal Confidential
10 Information.

11 3. This Stipulation of Confidentiality Protection shall not be construed as
12 a waiver by any party of the right to contest the designation of documents as
13 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEY'S EYES ONLY" under
14 this Stipulation of Confidentiality Protection. Any party desiring to contest the
15 protected designation of specific documents as "CONFIDENTIAL" or
16 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" shall give the producing party
17 notice in writing including the listing and/or specific description of any such
18 document. Unless the producing party agrees to remove the designation of
19 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEY'S EYES ONLY" on the
20 documents that are the subject of the contest within fifteen (15) days, the producing

1 party shall promptly request a hearing and file any necessary moving papers
2 expeditiously. Pending a Court determination, no document designated as
3 “CONFIDENTIAL” or "CONFIDENTIAL-ATTORNEY'S EYES ONLY" under
4 this Order shall be disseminated other than as provided by this Order unless
5 otherwise ordered by the Court or as stipulated by the parties.

6 4. No party shall be obligated to challenge the propriety or correctness of
7 the designation of information as CONFIDENTIAL or CONFIDENTIAL-
8 ATTORNEY'S EYES ONLY, and a failure to do so shall not preclude a subsequent
9 challenge to such status.

10 5. The parties, and law firms appearing as their counsel of record, may
11 only make use of CONFIDENTIAL documents and materials produced by persons
12 subject to this Stipulation of Confidentiality Protection as the preparation of this
13 case and trial may reasonably require, but in so doing shall disclose such documents
14 or materials only to such persons, including parties, their employees, counsel of
15 record and their employees, insurers and their employees, and witnesses, and
16 prospective witnesses, including testifying and consulting experts, involved in the
17 litigation process who must have the information from such documents and
18 materials for purposes of preparation of this case and trial.

19 6. Documents designated as “CONFIDENTIAL-ATTORNEY’S EYES
20 ONLY” shall not be provided to, viewed by or otherwise made available to any

1 person or entity other than counsel of record in the above captioned matter,
2 employees of their respective law firms, or testifying and/or consulting experts
3 retained in this matter.

4 7. The parties, and law firms appearing as their counsel of record, may
5 not make use of CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES
6 ONLY information for any purpose other than this pending litigation, including
7 without limitation, any competitive or business purpose.

8 8. Any party and/or experts desiring to do so may render any documents
9 and materials produced by itself or any other party in response to a written
10 discovery request CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES
11 ONLY and restricted and subject to the terms and prohibitions of this Stipulation of
12 Confidentiality Protection by designating such document or material as herein
13 provided. Designation shall be made by affixing to the documents, electronic
14 material or written response the words: "CONFIDENTIAL, DOCUMENT
15 SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL-ATTORNEY'S
16 EYES ONLY, DOCUMENT SUBJECT TO PROTECTIVE ORDER."

17 A designation shall subject the document or material, and its contents, to this
18 Stipulation of Confidentiality Protection without any further act on the part of the
19 person desiring confidentiality.

1 No party or expert shall designate a document as "CONFIDENTIAL" or
2 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" pursuant to this Stipulation of
3 Confidentiality Protection unless that party has a good faith belief that the document
4 contains or may contain or constitute trade secret, proprietary or other confidential
5 information that is the necessary subject of a protective order.

6 Any information that is designated "CONFIDENTIAL" or
7 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" shall be immediately and at all
8 times hereafter maintained and kept confidential, as subject to this Stipulation of
9 Confidentiality Protection.

10 9. Prior to dissemination of any information from CONFIDENTIAL or
11 CONFIDENTIAL-ATTORNEY'S EYES ONLY documents or materials, to any
12 witness, prospective witness, including any testifying or consulting expert retained
13 in this matter (except any court personnel or court reporter), counsel so
14 disseminating shall maintain in a log, the name, address, place of employment, and
15 employment capacity of each such person who is to receive such information,
16 evidencing that such person has executed the undertaking set out in paragraph 14
17 and Exhibit A.

18 10. The parties of record have the right to have persons present in the
19 inspection room at all times during the other party's inspection of any trade secret
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1 original documents and materials. The original trade secret documents and materials
2 produced under the terms of this Stipulation of Confidentiality Protection shall
3 remain in the custody and control of the producing party at all times.

4 11. Absent Court Order to the contrary, all documents and materials, and
5 copies of documents and materials, subject to this Stipulation of Confidentiality
6 Protection shall be returned and surrendered to the producing party or person upon
7 the conclusion of this lawsuit. Conclusion shall be taken and construed as the date
8 sixty (60) days following the entry of a final, non-appealable order disposing of this
9 lawsuit. Upon such conclusion, counsel of record shall notify counsel for the
10 producing party of compliance but shall not be required to make any oath. Counsel
11 shall make a reasonable effort to retrieve any document or information subject to
12 this Order from any party or non-party witness to whom such information has been
13 given, and shall notify counsel for the producing party of the failure to retrieve any
14 such information. Such notification shall include descriptive detail of any document
15 or material not returned.

16 This Stipulation of Confidentiality Protection shall remain in full force and
17 effect and each person subject to this Order shall continue to be subject to the
18 jurisdiction of this Court, for the purposes of this Order, in perpetuity, and the Court
19 shall not be divested of jurisdiction of any person or of the subject matter of this
20 Order by the occurrence of conclusion of this case, or by the filing of a notice of

1 appeal, or other pleading that would have the effect of divesting this Court of
2 jurisdiction of this matter generally.

3 **12. Federal Rule of Evidence 502(d) Order.** The parties request and
4 stipulate that the Court issue an Order as provided in Federal Rule of Evidence
5 502(d) providing that disclosure of privileged material in the discovery process shall
6 not constitute a waiver of any privilege in this or any other proceeding. Further,
7 inadvertent production shall not be asserted as a ground for seeking an order later
8 compelling production of the material inadvertently disclosed. Privileged
9 documents must be returned to the disclosing party "irrespective of the care taken
10 by" the party in reviewing them prior to production.

11 **13.** No person who examines any information that is protected by this
12 Stipulation of Confidentiality Protection shall disseminate orally, or by any other
13 means, any CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY
14 information other than as permitted by this Order.

15 All portions of deposition transcripts that relate to information protected by
16 this Stipulation of Confidentiality Protection shall be kept confidential. Any party
17 may designate specific pages as confidential by written notification to all counsel
18 within fifteen (30) days of the receipt of the written deposition transcript. Such
19 designated portions will be kept confidential and may, if requested, be separately
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1 transcribed. If any party intends to file a protected document or a protected portion
2 of a deposition transcript with the Court, and if there is no dispute as to the
3 protected status of the document or deposition transcript, then the parties shall so
4 stipulate and jointly petition the Court that the document or deposition transcript be
5 filed under seal and not made part of the public record. If there is a dispute as to
6 whether a document or a portion of a deposition is protected and a party intends to
7 file the same with the Court, the party intending to use the claimed protected
8 document or portion of the deposition shall give the other parties at least ten (10)
9 days' written notice so as to give them the opportunity to move the Court for leave
10 to have the materials filed under seal. If any party intends to offer a protected
11 document or protected portion of a deposition into evidence at trial, that party shall
12 notify the party asserting confidentiality, and the party asserting confidentiality shall
13 so notify the Court and the Court will then consider what steps, if any, should be
14 taken to protect the confidential information. The party offering such evidence shall
15 have no responsibility to notify the Court as to the claim of confidentiality.

16 14. Each person examining any protected documents or information
17 pursuant to this Stipulation of Confidentiality Protection shall, in writing as outlined
18 in EXHIBIT A, first agree to submit himself or herself to the jurisdiction of this
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1 Court, shall agree to be bound by this Order and shall agree to keep all information
2 received confidential as herein provided.

3 15. Nothing contained in this Stipulation of Confidentiality Protection shall
4 constitute a waiver of any party's right to assert that CONFIDENTIAL or
5 CONFIDENTIAL-ATTORNEY'S EYES ONLY information or material is entitled
6 to greater protection and/or limitation of access than afforded by this Stipulation of
7 Confidentiality Protection, including an assertion that certain such information or
8 materials should not be produced at all. In the event that counsel for any party
9 asserts that CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY
10 information or material is entitled to such greater protection and/or limitation of
11 access, counsel shall confer with counsel for all other parties in an effort to resolve
12 the matter. If resolved by agreement, counsel shall submit a stipulated form of
13 Order to the Court reflecting any terms of agreement providing any such greater
14 protection or limitations of access than otherwise provided by this Stipulation of
15 Confidentiality Protection. In the absence of agreement, any party may move the
16 Court for an Order further protecting, limiting or denying access.

17 16. References to person in this Stipulated Protective Order of
18 Confidentiality shall be taken and construed to refer to natural persons, and to
19 corporations and other entities.

1 17. The provisions of this Stipulated Protective Order shall govern any
2 documents and testimony provided by any third-party to this suit.

3
4 **IT IS HEREBY SO ORDERED.**

5 DATED THIS 13th day of January, 2015.

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7 s/Lonny R. Suko
8 Honorable Lonny R. Suko

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10 Respectfully submitted this 12th day of January, 2015, by the parties jointly.

11 By:

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17 *Counsel for Plaintiffs*
18
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1 By:

2 /s/ R. Scott Johnson _____

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6 *Counsel for Plaintiffs OTR Wheel Engineering, Inc.,*
7 *Blackstone/OTR, LLC, and F. B. T. Enterprises, Inc.*

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 OTR WHEEL ENGINEERING, INC.,
BLACKSTONE/OTR, LLC, and
11 F. B. T. ENTERPRISES, INC.,

12 Plaintiffs,

13 vs.

14 WEST WORLDWIDE SERVICES,
INC., and SAMUEL J. WEST,
15 individually, and his marital
community,

16 Defendants.

No. 2:14-CV-00085-LRS

CONSENT TO BE BOUND BY
STIPULATION OF
CONFIDENTIALITY PROTECTION
AND FEDERAL RULE OF
EVIDENCE 502(D) ORDER

1 In exchange for being provided access to protected and confidential
2 information in connection with the above-captioned lawsuit, I
3 _____, hereby agree
4 to submit to the jurisdiction of the United States District Court for the Eastern
5 District of Washington, for the purposes of the Stipulation of Confidentiality
6 Protection and Federal Rule of Evidence 502(d) Order filed in the above-captioned
7 action at ECF No. 90.

8
9 DATED this ____ day of _____, 20____.

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11 By: _____
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